* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : May 17th, 2007
Date of decision : May 22nd 2007

\+ CRL.REV.P. 845/2006

LAJPAT RAI SURI ..... Petitioner
Through Mr. Jagjit Singh, Advocate

versus

SUBHASH SURI ..... Respondent
Through

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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Mr. Justice S. Ravindra Bhat

1. This is a revision under Section 397 Criminal Procedure Code (hereafter "the Code"). It challenges the judgment of the Additional Sessions Judge (hereafter "the Appellate Court") dated 21.9.2005, rejecting the petitioner's appeal against conviction, under Section 323, Indian Penal Code (IPC). The trial court found him guilty of the offences under Sections 341 and 506, IPC and released him on probation; he was also directed to pay compensation of Rs.25,000/- and fine of Rs. 5,000/-. The Appellate Court

allowed the appeal so far as it was directed against the findings against Section 341/506. The compensation of Rs. 25,000/- directed to be paid to the complainant was set aside. The conviction and sentence under Section 323 was affirmed; that has been assailed in these proceedings.

2. Briefly the facts are that the petitioner was accused of offences under Sections 341/323/506(1) Indian Penal Code (hereafter "IPC"). According to the complainant, Subhash Suri, (brother of the petitioner) in an incident which occurred on 20.8.2000 at about 7.30 he was stopped, abused and assaulted. The complainant alleged that the petitioner caught hold of him by the neck, rained fist blows upon his mouth, beat him up, and kicked him, which resulted in several injuries upon his person. It was alleged by the complainant that another brother V.P.Suri intervened and saved him from the petitioner accused who also used indecent and threatening language. The complainant called the police who took both the parties to the police station. The complainant was taken to hospital namely the All India Institute of Medical Sciences (AIIMS) where he was examined. During the trial the complaint was supported by PW-1, Police Constable Jag Mohan, Shanker Prasad PW-2, PW-3 and the complainant PW-4.

3. The petitioner's defence was that both parties had a long history of disputes which included the complainant engaging himself in acts of breach of peace and disturbing public tranquility which had previously resulted in an order dated 18.1.1991 by the Special Executive Magistrate. An earlier effort of the complainant, to have proceedings under Section 107, 151 of the Code drawn, were dropped because he had lodged a false complaint about an incident dated 24.1.1998 when the Petitioner was admittedly out of

the country. In his defence the petitioner urged that soon after the matter, i.e the so-called incident parties were taken to the police station, the matter was amicably resolved and duly recorded in a diary entry. In spite of this, the complainant chose to implicate the petitioner and level baseless allegations, against him.

4. Learned counsel for the petitioner urged that findings of the courts below are unsupported by any reliable evidence. According to him what impressed the courts were testimonies of PWs- 3 and 4, who had history of enmity against him. Counsel contended that the testimony of PW-3, was wholly unworthy of credence since he too had a dispute with the petitioner and was an accused in another incident where the petitioner's wife was a complainant. As far as the statement of PW-4 complainant was concerned, counsel stated that this was belied by two circumstances namely the diary entry and the supporting statement of PW-1 and PW-2 who established that after the parties were went to the police station the matter was compromised. He also submitted that the medical evidence was neither cogent nor comprehensible and the findings of the courts below were mechanical and presumptive, based upon absolutely no material or evidence.

5. Learned counsel relied upon the judgment of a Division Bench of this court reported as *Sher Singh Vs. State, 1995, RCR* and submitted that examination of a record clerk to prove handwriting of a medical practitioner or doctor did not constitute proof. It was submitted that the courts below fell into grave error in concluding that the materials were sufficient to arrive at a finding of guilt. Learned counsel further submitted that the courts below also fell into error in applying differing yardsticks for appreciation of evidence. On the one hand the deposition of PW 3, also a brother of the accused and the

complainant was accepted, whereas the deposition of DW-3 was discarded although there was no reason to do so. DW-3, Kuldeep Suri is another brother of the petitioner as well as the complainant.

6. Notice was issued on 24.1.2007, in this case; it was served upon the respondent On the date of hearing, i.e today, despite the matter being kept back at second call, the respondent did not enter appearance. The matter was therefore proceeded with on merits.

7. The brief facts have been discussed above. I have considered the evidence namely copies of depositions of PW-1, PW-2, PW-3, PW-4, DW-1, DW-2 and DW-3 as well as the copy of the DD Entry 20.8.2000 and medical certificate produced before the trial court namely PW-2/A. These show that some quarrel took place in the morning of 20.8.2000; the complainant alleged that he was beaten and kicked badly. The police was approached; copies of the DD Entries were part of the record. The two entries namely 2A and 4A mention about the quarrel and; according to DD No.4(A) P.S. Lajpat Nagar-II, the disputes and disagreements were with regard to minor arguments of division of a house. The Entry recorded that parties have got the matter settled and the complainant as well as the petitioner did not wish to proceed further. A reading of the Appellate Court's order would show that it formed an opinion that the findings were based essentially on the following conclusions :

> "*A cumulative study of the above referred three documents reveals that a matter was recorded to the PCR regarding which a QST was prepared and transmitted to PS Lajpat Nagar where DD No.2-A was recorded and HC Naresh and Ct. Ajay Kumar had left for the spot. The spot*

was recorded in these two documents is E-43/44 Lajpat Nagar-II. These two documents when read with the evidence of complainant PW-4 do support his testimony that he had made a phone call to the PCR. The police had arrived and taken them both to the hospital. Ex. PW 2/A, i.e. MLC corroborates the statement of PW-4 to the effect that he was taken to AIIMS for treatment. Ex. PW 4/B, DD entry 2-B can also be read in support of the complainant's case because it does mention of a dispute between the two brothers at E-43/44, Lajpat Nagar-II. Though, it also mentions of a compromise, yet compromise cannot be read; as there is no statement by the complainant recorded by the IO proving that compromise had taken place. I find no merits in the arguments of Ld. Counsel for the appellant that time of 10.34 AM recorded in the MLC makes the same doubtful because the complainant was present at the PS at 10.40 AM, when DD No.2-B was recorded. DD No.2-B does not any where record the presence of complainant at the PS. This is merely a report by the HC Naresh, which cannot be accepted to be true in the absence of statement of the complainant reinforcing the compromise. From the material as discussed above, I am of the opinion that an occurrence did take place on 20.8.2000 before 8.35 AM, regarding which a report was made by the complainant to the PCR. Complainant was also medico legally examined at the hospital and some injuries were noticed. Though the information on the MLC cannot be read as the MLC has been proved only by a record clerk of the AIIMS; yet an opinion can be drawn that Subhash Suri was medico-illegally examined at AIIMS on the day of the occurrence. The injuries can at the least be presumed to be simple in nature. The charge u/S. 323 IPC is, therefore, established and the impugned judgment to that effect is upheld."

8. In the earlier part of the judgment the court had discarded the eye witness testimonies of PW-3 and DW-3, both brothers of the parties. It also discarded the testimony of DW-2 on the ground that he was an interested witness, being employee of the petitioner. It proceeded solely on two circumstances i.e. The DD entries and

deposition of PW-2 . The extracted part of the judgment would show that the court drew inferences. The first inference is that though the DD mentioned a compromise yet that should not have been taken into consideration because there was no statement by the complainant proving that such compromise had taken place. This, I am of the opinion was in clear error because Constable Jag Mohan PW-1 did mention about the compromise in spite of the DD Entry. He further stated that there was nothing regarding medical examination of the complainant. In such circumstances the only evidence which survived for consideration was that of PW-4, the complainant who stated about alleged assault and relied on the eye witness testimony of Ved Prakash Suri. The evidence of Ved Prakash Suri was discarded. In these circumstances it was necessary that the allegation about medical examination had to be corroborated.

9. The court does not appear to have taken into consideration the contents of the MLC relied upon. Apart from the fact whether the record could have been proved by a staff member and not a doctor, it was also necessary to see the contents of the document in order to be satisfied whether any injuries had been made out. In the deposition PW-4 had categorically stated that the petitioner rained several blows, besides kicking him. The copy of the MLC produced before the courts below is absolutely unreadable. Perhaps this was the reason why neither court adverted to the nature of injuries. Instead they chose to go by a general surmise that since a record clerk of the AIIMS had answered the summons to prove the genuineness of the document, some injury must have been inflicted on the person of the complainant.

10. One of the fundamental rules which should courts have to at all times be alive to

is that the burden of proving all allegations levelled lies upon the prosecution. This burden is said to be discharged only when the case alleged by it is proved beyond reasonable doubt. In this case after having discarded the testimony and evidence of PW-3 DW-2 and DW-3, only depositions of PW-1 and PW-4 survived consideration PW-1 categorically spoke about the compromise – that was considered unworthy of acceptance by the courts. PW-2 the record clerk could not have proved about the injuries. The document produced by him is not comprehensible or legible. In the totality of these facts and attendant circumstances, the prosecution, in my considered opinion, cannot conceivably be said to have been proved its case beyond reasonable doubt.

11. The High Court undoubtedly has limited revisional jurisdiction - it cannot in the exercise of its discretion convert a finding of acquittal and convict an accused. However, if the records or the proceedings of any of the courts below in a given case point to material irregularity, illegality or conduct of the proceedings which have resulted in manifest failure of justice, the court can legitimately intervene and cure such illegality or irregularity. In the facts of this case, I am satisfied that the findings of the courts below convicting the petitioner of the offence under Section 323 and imposing the sentence upon him, are unsupported by the legal evidence which proved his guilt beyond reasonable doubt.

12. For the above reasons the petition has to succeed. Accordingly, it is allowed. The impugned judgment and order dated 21.9.2005 and the sentence imposed by the trial court dated 10.9.2004 so far as they convicted the petitioner under Section 323 are hereby set aside.

(S.RAVINDRA BHAT)
JUDGE

MAY 22, 2007
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